

HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

WILLIAM J. SESKO and NATACHA SESKO,
husband and wife,

Plaintiffs,

vs.

CITY OF BREMERTON, a municipal
corporation; BUCKLEY RECYCLE CENTER,
INC. aka BRC, INC. a Washington
Corporation; and PARAMETRIX, INC., a
Washington Corporation,

Defendants.

Case No.: C04-5081 RBL

ANSWER TO COMPLAINT FOR
DAMAGES

DEMAND FOR JURY TRIAL

Defendant City of Bremerton hereby answers Plaintiffs' Complaint for Damages as follows:

1. Defendant, the City of Bremerton ("Bremerton"), denies the allegations
contained in paragraph 1 of the complaint.

2. Bremerton admits the allegations contained in paragraph 2 of the complaint.

1 3. Bremerton admits that plaintiffs own the real property described in paragraph
2 3, but lacks sufficient knowledge to form a belief as to the truth or falsity of the remaining
3 allegations contained therein and they are therefore denied.

4 4. Bremerton admits the allegations contained in paragraph 4 of the complaint.

5 5. Bremerton admits the allegations contained in paragraph 5 of the complaint.

6 6. Bremerton admits the allegations contained in paragraph 6 of the complaint.

7 7. Bremerton admits the allegations contained in paragraph 7 of the complaint.

8 8. Bremerton admits the Arsenal Way property was annexed into the City in June
9 1991 and that the property is zoned "Industrial Park." Bremerton denies the remainder of the
10 factual allegations contained in paragraph 8.

11 9. Bremerton admits that the Seskos have accumulated various items on their
12 properties, but lacks sufficient knowledge to form a belief as to the truth or falsity of the
13 remaining allegations contained in paragraph 9 and they are therefore denied.

14 10. Bremerton denies that by the time the Seskos' received the City's change of
15 position that the time to appeal had lapsed. The remainder of the allegations contained in
16 paragraph 10 are admitted.

17 11. Bremerton admits the allegations contained in paragraph 11 of the complaint.

18 12. Admit that the trial court granted the City's motion for partial summary
19 judgment and that following trial the Court entered findings, conclusions and judgment. The
20 records and files of the Kitsap County Superior Court speak for themselves. To the extent the
21 allegations made in paragraph 12 of the complaint are inconsistent with the Court files and
22 transcripts, they are denied.

23 13. Bremerton admits the allegations contained in paragraph 13 of the complaint.

1 14. Bremerton admits the allegations contained in paragraph 14 of the complaint.

2 15. Bremerton lacks sufficient knowledge to form a belief as to the truth or falsity
3 of the allegations contained in paragraph 15 of the complaint and they are therefore denied.

4 16. Bremerton admits the allegations contained in paragraph 16 of the complaint.
5 The records and files of the Kitsap County Superior Court speak for themselves. To the
6 extent the allegations made in paragraph 16 of the complaint are inconsistent with the Court
7 files and transcripts, they are denied.

8 17. Admit that in early January 2001 the City commenced abatement of the
9 nuisance on the Pennsylvania Avenue property. Deny that the Seskos assisted in the
10 abatement. Admit that objects were moved to an adjacent property. The remainder of the
11 allegations contained in paragraph 17 are denied.

12 18. Bremerton admits the allegations contained in paragraph 18 of the complaint.

13 19. Bremerton admits that the Seskos informed the City that they had failed to tag
14 objects and vehicles, and that on October 17, 2001 the City filed a motion for clarification.
15 The remaining allegations contained in paragraph 19 are denied.

16 20. Bremerton admits the allegations contained in paragraph 20 of the complaint.

17 21. Bremerton admits the allegations contained in paragraph 21 of the complaint.

18 22. Bremerton admits the allegations contained in paragraph 22 of the complaint.

19 23. Bremerton denies the allegations contained in paragraph 23 of the complaint.

20 24. Bremerton denies that “[a] City official based its obviously subjective
21 determination of what items are associated with residential use of the property on the
22 definition of “residential” in Websters [sic] dictionary.” The remainder of the allegations
23 contained in paragraph 24 of the complaint are admitted.
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1 25. Bremerton admits that the Seskos, appearing pro se, filed a cross-motion
2 requesting that the court find that the list of 155 items tagged by them were not subject to the
3 abatement action. The remainder of the allegations contained in paragraph 25 of the
4 complaint are denied.

5 26. Bremerton denies that the Court disregarded the Seskos' testimony about the
6 residential use of such items and a shredder on a property of that size; the Planning Director's
7 earlier agreement; and that the City falsely denied the agreement regarding two pieces of
8 heavy equipment. The remainder of the allegations contained in paragraph 26 are admitted.

9 27. Bremerton admits the allegations contained in paragraph 27 of the complaint.

10 28. In response to paragraph 28 of the complaint, Bremerton denies that it did not
11 attempt to work with the Seskos to resolve the issues. The remainder of the allegations in that
12 paragraph are denied.
13

14 29. The City lacks sufficient information to form a belief as to the truth or falsity
15 of the allegations contained in paragraph 29 of the complaint, and they are therefore denied.
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17 30. With respect to paragraph 30, admit that the Court proceeded with the hearing
18 and issued an order. Deny the Court ruled "summarily."

19 31. Admit the quotes directly taken from the record in paragraph 31. Bremerton
20 has insufficient information to form a belief as to the truth or falsity of the allegation
21 regarding the Seskos state of mind at the hearing, and therefore deny the same.

22 32. Bremerton admits the allegations contained in paragraph 32 of the complaint.

23 33. Admit the quotes taken directly from the record in paragraph 33. Bremerton
24 has insufficient information to form a belief as to the true or falsity of the allegation regarding
25 the Seskos state of mind at the hearing, and therefore deny the same.
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1 34. Bremerton admits the allegations contained in paragraph 34 of the complaint.

2 35. Bremerton admits the allegations contained in paragraph 35 of the complaint.

3 36. Bremerton admits the allegations contained in paragraph 36 of the complaint.

4 37. Bremerton admits the allegations contained in paragraph 37 of the complaint.

5 38. Bremerton admits the City commenced abatement on the Arsenal Way
6 property on or about December 17, 2001, that the contractors hauled two truck of metal and
7 metal pipes from the Pennsylvania property to the Arsenal Way property for staging, and that
8 this continued. The remainder of the allegations made in paragraph 38 of the complaint are
9 denied.
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11 39. Admit that the City issued a cease and desist order against Mr. McConkey.
12 The remainder of the allegations contained in paragraph 39 of the complaint are denied.

13 40. Bremerton lacks sufficient knowledge to form a belief as to the truth or falsity
14 of the allegations contained in paragraph 40 and they are therefore denied.
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16 41. Bremerton admits that in October 2002 the City sought an order clarifying the
17 Court's previous order. The remainder of the allegations contained in paragraph 41 are
18 denied.

19 42. The Courts order speaks for itself and is admitted. To the extent the
20 allegations contained in paragraph 42 of the complaint are inconsistent with the court records,
21 they are denied.

22 43. Bremerton admits the allegations contained in paragraph 43 of the complaint.

23 44. Bremerton denies the allegations contained in paragraph 44 of the complaint.

24 45. Bremerton denies the allegations contained in paragraph 45 of the complaint.

25 46. Bremerton denies the allegations contained in paragraph 46 of the complaint.
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1 47. Bremerton denies the allegations contained in paragraph 47 of the complaint.

2 48. Bremerton admits the allegations contained in paragraph 48 of the complaint.

3 49. In response to paragraph 49 Bremerton incorporates its responses contained in
4 paragraphs 1 through 48, above.

5 50. With respect to paragraph 50, admit the text of 42 U.S.C. 1983 is correctly
6 quoted. Deny that it is relevant, in part.

7 51. Bremerton denies the allegations contained in paragraph 51 of the complaint.

8 52. Bremerton denies the allegations contained in paragraph 52 of the complaint.

9 53. In response to paragraph 53 Bremerton incorporates its responses contained in
10 paragraphs 1 through 52, above.

11 54. Bremerton denies the allegations contained in paragraph 54 of the complaint.

12 55. In response to paragraph 55 Bremerton incorporates its responses contained in
13 paragraphs 1 through 53, above.

14 56. Bremerton denies the allegations contained in paragraph 56 of the complaint.

15 57. Bremerton denies the allegations contained in paragraph 57 of the complaint.

16 58. In response to paragraph 58 Bremerton incorporates its responses contained in
17 paragraphs 1 through 57, above.

18 59. Bremerton denies the allegations contained in paragraph 59 of the complaint.

19 60. Bremerton denies the allegations contained in paragraph 60 of the complaint.

20 61. In response to paragraph 61 Bremerton incorporates its responses contained in
21 paragraphs 1 through 60, above.

22 62. Bremerton denies the allegations contained in paragraph 62 of the complaint.

23 63. Bremerton denies the allegations contained in paragraph 63 of the complaint.

1 64. In response to paragraph 64 Bremerton incorporates its responses contained in
2 paragraphs 1 through 63, above.

3 65. Bremerton denies the allegations contained in paragraph 65 of the complaint.

4 66. Bremerton denies the allegations contained in paragraph 66 of the complaint.

5 67. Bremerton denies the allegations contained in paragraph 67 of the complaint.

6
7 **AFFIRMATIVE DEFENSES**

8 1. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which
9 relief can be granted.

10 2. Plaintiffs' claims are barred by the doctrines of claim and issue preclusion,
11 collateral estoppel and/or res judicata.

12 3. Plaintiffs' injuries or damages, if any, which are expressly denied, were caused
13 or contributed to by their own conduct and actions and /or contributed to by the acts of third
14 parties.

15 4. Plaintiffs have failed to mitigate their damages.

16 5. Plaintiffs have failed to exhaust their administrative and/or State Court
17 remedies.

18 6. This Court lacks subject matter jurisdiction over the federal law claims
19 asserted herein.

20 7. This Court lacks supplemental jurisdiction over the state law claims asserted
21 herein.

22 8. Plaintiffs' claims are barred because defendants are entitled to governmental
23 immunity for any and all decisions taken regarding the matters stated in the Complaint in that
24 all of such decisions and actions manifest a reasonable exercise of judgment and discretion by
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1 authorized public officials made in the exercise of governmental authority entrusted to them
2 by law.

3 9. Plaintiffs' claims are barred because defendants acted in accordance with
4 applicable statutes, governmental regulations, industry standards, and state of knowledge or
5 state of the art at the time of the damages alleged by plaintiffs.
6

7 10. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and/ or laches.

8 11. Plaintiffs' claims are barred by the statute of limitations.

9 **VII. JURY DEMAND**

10 Defendant, City of Bremerton hereby demands trial by jury pursuant to FRCP 38(b).

11 WHEREFORE, Defendants having fully answered Plaintiff's Complaint, prays as
12 follows:

13 1. That Plaintiffs take nothing by reason of their complaint and that Judgment be
14 rendered in favor of Defendant, City of Bremerton;
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16 2. That Defendant, City of Bremerton be awarded its costs of suit incurred in
17 defense of this action; and

18 3. For other relief as the Court deems proper.

19 DATED this 16th day of March, 2004.

20 ROGER A. LUBOVICH
21 Bremerton City Attorney

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